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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 183.

CHARLES GAGNON, Appellant,

v.

THE UNITED STATES and the SIOUX AND CHEYENNE INDIANS.

BRIEF FOR APPELLANT.

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BRIEF FOR APPELLANT.

I. Statement of the Case.

The Claim.

This is a claim presented to the Court of Claims under the act of March 3, 1891 (26 Stat. L. 851), "To provide for the adjudication and payment of claims arising from Indian depredations."

The court found the facts as regards the seizure and value of the property as follows (Record, p. 2):

"I. Indians of the Sioux and Cheyenne tribes took property from the firm of Hosford & Gagnon, in the Territory of Wyoming, February, 1866, of the aggregate value of $15,500. The depredation was without just cause or provocation on the part of the owner or agent in charge.

"II. One-half of the property so taken was owned by James W. Hosford, for which he had maintained suit under No. 3912 in this court and recovered judgment in the sum of $7,750, which judgment has been satisfied. The other half of the property so taken, amounting to $7,750, was owned by the claimant, Charles Gagnon, which half has not been returned or paid for.

"III. The Indians by whom the property was taken were members of a tribe in amity with the United States at the date of the depredation."

Record of Naturalization.

Findings IV, V and VI (pp. 2–6) may be summarized as follows:

The claimant was born in Canada, a subject of the British Crown. He declared his intention to become a citizen of the United States before the District Court of Woodbury County, Iowa, March 12, 1858. It is claimed that he was admitted to become a citizen of the United States by the District Court of the first judicial district of the Territory of Nebraska, within and for the County of Richardson, on the 25th day of September, 1863. The judge and clerk of said territorial court died before the proceedings were had in March, 1897, for the *nunc pro tunc* order. To establish his citizenship the claimant relies exclusively upon the record made by the District Court for the first judicial district of the State of Nebraska, successor to said District Court of the Territory, on application made March 29, 1897. In this order it is recited that it appeared to the court by competent evidence that Gagnon, the claimant, made application to the court at its September Term, 1863, to be naturalized as a citizen of the United States; that he produced his certificate of declaration of intention and his witnesses; that after hearing the testimony of those witnesses as to his qualifications, the court being satisfied, granted an order admitting him to citizenship, and administered the oath of allegiance and abjuration required by law; that the judgment of naturalization was never recorded, and if recorded, the record is lost, and cannot be found; that it is legal and proper that the record be supplied; and the court therefore orders that the judgment ren-

dered by that court at its September Term, 1863, be entered at large on the journal as of the day when it should have been entered, September 25, 1863, and that the clerk issue to the applicant the proper certificate of naturalization. This was done; and the restored certificate dated September 25, 1863, reciting the proceedings as having taken place on that date appears in the record (p. 4).

Notice to Attorney-General.

Prior to making the application, notice was served on the Attorney-General, March 19, 1897 (foot of p. 5), that it would be made, it being stated in the notice that it was for the purpose of presenting to the Court of Claims "authenticated copies of said restored record (should it be restored) as evidence" in this case.

Condition of District Court Record for 1863.

Finding V (p. 6) contains the result of a search of the records of the district court of the county, by a special attorney of the Department of Justice, admitted as evidence by agreement of parties, in regard to the state of the dockets of that court in the year 1863, as well as before and after, from which it appears that up to and including the year 1862, the records are complete and include an appearance docket, a trial calendar and journals; subsequent to 1863 there are also appearance dockets, trial dockets and journals; for the year 1863 the appearance docket, containing numerous blank pages, and the trial docket are shown to exist. Nothing is said about a journal for 1863.

Absence of Record or Memorandum.

Findings VI and VII (pp. 6, 7) are as follows:

"VI. There is no record or memorandum or other paper of any kind in the records of said court or among

the files thereof showing or relating to an application by Charles Gagnon for naturalization before said district court, nor was there any such paper in the records of said court on the 29th and 30th days of March, 1897, when the proceedings for restoration of the record of naturalization were taken, nor does it appear that a certificate of naturalization was ever issued or delivered to the claimant.

"VII. Upon the foregoing findings of fact the court finds the ultimate fact, so far as it is a question of fact, that the claimant, Charles Gagnon, was not at the time of the depredation a citizen of the United States."

Opinion of Court of Claims.

The court held in the opinion delivered by Judge Peelle (pp. 7–13) that the restored record could not be accepted as evidence of naturalization, and therefore that the claimant was not a citizen of the United States at the time the depredation was committed. The case is reported 38 C. Cls. 10.

Judgment and Appeal.

Judgment was rendered dismissing the petition (p. 14). The claimant thereupon appealed to this court (p. 14).

II. Assignment of Error.

The appellant hereby assigns for error that the Court of Claims failed to give full faith and credit to the record of the district court for the first judicial district of the Territory of Nebraska in and for the County of Richardson, as restored by the district court for the first judicial district of the State of Nebraska, successor of said district court of the Territory, containing the judgment of his naturalization, and found that the appellant was not a citizen of the United States at the time the depredation was committed in 1866 and rendered judgment dismissing his petition;

Whereas, said Court of Claims should have held that full faith and credit was due to the record of naturalization in said district court for the first judicial district of the Territory of Nebraska in and for the County of Richardson, as restored by the district court for the first judicial district of the State of Nebraska, successor of said district court of the Territory, and should accordingly have held that the appellant was a citizen of the United States from the date of his admission as such by said district court of the Territory, September 25, 1863, and should have given judgment in his favor.

III. Brief of Argument.

The Question Stated.

The findings of the court show that the property for which payment is claimed belonged to the firm of Hosford & Gagnon; that the other partner, Hosford, has already recovered a judgment for his half; and that the remaining one-half belonged to the claimant, Charles Gagnon.

This court decided in *United States* v. *Burns*, 12 Wall. 246, 254, that the claims of partners where depending upon a difference of personal status between the members of the partnership might be severally prosecuted by each partner for his separate interest, the Court of Claims not being bound by any special rules of pleading in this respect.

The Court of Claims correctly states at the opening of its opinion (p. 7) the sole question involved in the case. "The question presented is: Was the claimant a citizen of the United States at the date of the depredation complained of in February, 1866?"

In the decision of that question this court is not concluded by the finding of the Court of Claims as to the ultimate fact that the claimant was not at the time of the depredation a citizen of the United States.

The findings are framed by the Court of Claims in accordance with the rule laid down by this court in *United States* v. *Pugh*, 99 U. S. 265, where the third paragraph of the syllabus correctly states the effect of the decision on this point:

"The judgment of the Court of Claims as to the legal effect of what may, perhaps not improperly, be termed the ultimate circumstantial facts of the case, is, if the question is properly presented, subject on appeal to be here reviewed; and where the rights of the parties depend upon such circumstantial facts alone, and there is doubt as to the legal effect of them, it is the duty of that court to frame its findings so that the question as to such effect shall be presented by the record."

This is also in accordance with what was said by this court in *United States* v. *Clark*, 96 U. S. 37, 39:

"It is clear that upon this testimony alone the Court of Claims fixed the sum lost by claimant. We are asked by the counsel for the government to hold that it is not competent evidence to establish that fact.

"It is manifest that, before we can do this, we must also hold that where that court has found in due form, and presented to us one of those ultimate facts which it is required to find, and which is necessary to its judgment, and has at the same time presented as part of its findings all the evidence on which that fact was found, we can look at both findings to see whether that evidence was competent proof of that fact. This is precisely what was done in *Moore* v. *United States*, 91 U. S. 270."

The question, therefore, presented by this record is whether the circumstantial facts found in detail in Findings IV, V and VI (pp. 2–6) warrant the ultimate finding contained in Finding VII, that the claimant was not at the time of the depredation a citizen of the United States. It is claimed on his behalf that they not only did not warrant that finding but that they conclusively show that

he was at the time of the depredation a citizen of the United States.

Statute Making District Court Successor.

Immediately upon the admission of Nebraska as a State the legislature passed an act approved June 15, 1867 (Laws of Nebraska, 1867, p. 58), making the District Courts of the State successors to the District Courts of the Territory.

"An Act to transfer suits at law and in chancery, prosecutions, judgments, decrees and proceedings in the courts of the Territory of Nebraska, to the courts of the State of Nebraska.

"SEC. 2. The records in all suits at law and in chancery, and all prosecutions, recognizances, bonds for appeals, and proceedings in error, judgments, decrees, orders, records, files, and proceedings pending and remaining in the district courts of the Territory of Nebraska, in the respective counties thereof, except such suits wherein the United States of America is a party, shall be, and the same are hereby, transferred to the respective district courts of the State of Nebraska, and all said suits at law and in chancery, recognizances, prosecutions, bonds for appeal and proceedings in error, shall be proceeded in, by, and all said judgments, decrees, orders, records, files, and proceedings, except as aforesaid, shall become, and are hereby made the judgments, decrees, orders, records, files, and proceedings of the said respective district courts of the State of Nebraska, as effectually, in all respects, as though said suits at law and in chancery and prosecutions had been originally instituted, and all said bonds, judgments, recognizances, decrees and orders had been originally obtained, rendered and made, and all said records, files, and proceedings had originated in the said respective district courts of the State of Nebraska; and that all said judgments, decrees, and orders aforesaid, may, and shall be enforced, by executions, orders of sale or otherwise, as effectually by the said respective district courts of the State of Nebraska, as though the same had

been obtained, rendered and made in said respective district courts last aforesaid."

Proceedings Restoring Record Regular.

By Section 905 of the Revised Statutes, it is provided as follows:

"The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The certificate contained in the record (pp. 3–5) complies strictly with the requirements of this section.

Among the recitals of the proceedings so produced is the following:

"It appearing to the court by competent evidence that the said Charles Gagnon made application to this court at its September Term, 1863, to be naturalized as a citizen * * * and the court being satisfied in the premises, granted an order admitting said Gagnon to such citizenship and administered to him the oath of allegiance required by law. * * *

"And it having been made to appear further to this court that said judgment of naturalization was never recorded and if recorded the record is lost and can not be found in the records of this court." (Finding IV, bottom p. 3.)

In the court below the defendants attacked the validity of the proceeding and undertook to show that none of the records had been lost and the court says in its opinion (p. 7), "In support of their contention they rely on the facts set forth in Findings V and VI, which, in substance, are that the records of the district court of the Territory of Nebraska for the year 1863, and prior and subsequent thereto, are now complete and intact."

The facts found do not sustain this statement of the court. An examination of Finding V will show—

1. From the organization of the court down to and including the year 1862, the records are complete and include an appearance docket, a trial calendar and a journal.

2. Subsequent to the year 1863 there are also appearance dockets, trial dockets and journals.

3. The appearance docket covering the year 1863 is shown to exist, though it contains blank pages, and the trial docket for this year also exists, as is shown by the references to it. But the one important and material record of the court, the journal for 1863, has not been shown to be in existence.

The journals existed down to and including the year 1862 and subsequent to the year 1863, but the journal for 1863, the record of the court, which in all probability is the one in which the record of the claimant's naturalization was made, is not shown to be in existence. It is therefore an error to say that the records for the year 1863 "are now complete and intact." If the journal of the court is lost, it is not at all remarkable that "there is no record or memorandum or other paper of any kind in the records of said court or among the files thereof showing" the claimant's naturalization (Finding VI, p. 6).

Naturalization—Requirements.

While in some of the older jurisdictions the practice has grown up of requiring written applications for naturalization, there was no statute requiring it when this claimant was naturalized in 1863.

The statutes in regard to naturalization in force September 25, 1863, provide:

"That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise:—

"*First*, That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least, before his admission, that it was, bona fide, his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

"*Secondly*, That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court." (2 Stat. L. 153.)

This act was amended by section 4 of the act of May 26, 1824 (4 Stat. L. 69), so that a declaration of intention made two years before his admission shall be sufficient. These acts have been carried into the Revised Statutes of the United States as section 2165.

The statute requires therefore that the party shall make a declaration on oath before the court and that the clerk of the court shall record the proceedings. The de-

claration on oath by the applicant gives the court jurisdiction; not the recording of the proceeding by the clerk. The court will take judicial notice of the fact, for it is a fact of general history, that the Territory of Nebraska in the year 1863, was a new and sparsely settled country and that judicial proceedings were not carried on with the technical formalities which obtained in older jurisdictions where the business of the courts was much greater and more complicated.

It was the duty of the clerk, under the statute, to make record of the proceedings. It is usual to record all matters of this kind, which are *ex parte*, and which are transacted openly in court, in the journal. Indeed, we may say, from the record in this case that the practice of the court in question was to record naturalization proceedings in the journal; for the court when in 1897 restoring the record, directed that the judgment be entered at large on the journal of the court, and it is recorded in Journal 10, pp. 218, 219 and 220 (p. 5). If the journal for 1863 was not in the court it is not to be expected that any record of the claimant's naturalization would exist, and therefore Finding VI is immaterial.

Naturalization Judgments Conclusive.

It has been held since the earliest times that naturalization proceedings are conclusive where they were had in a court of competent jurisdiction. Chief Justice Marshall in the case of *Spratt* v. *Spratt*, 4 Pet. 393, 407, 408, speaking of naturalization proceedings, says:

"The various acts upon the subject submit the decisions on the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge on both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry; and, like every other judgment, to be complete evidence of its own validity."

In *The People* v. *Pease*, 30 Barb. 588, 604, the court said:

"The judge at the trial also suffered the party to attack the certificate of naturalization by evidence aliunde, and to show that it was procured by fraud; that its recitals were false, and that the party was not entitled to be naturalized. The certificate was the legal evidence of the judgment of a court of competent jurisdiction collaterally in question in the action. It was final and conclusive. It imported absolute verity, and could not, if valid on its face, be thus impeached in this action. When alienage is in issue, the judgment of the court admitting the alien to become a citizen is conclusive evidence upon that point. (*Ritchie* v. *Putnam*, 13 Wend. 524.) A record of naturalization can not be contradicted by extrinsic proof that no declaration of intention had in truth been made. (*Banks* v. *Walker*, 3 Barb. Ch. Rep. 438.) Like any other judgment, it is complete evidence of its own validity. (*Spratt* v. *Spratt*, 4 Peters, 393.)"

In the case of *The People* v. *McGowan*, 77 Ill. 644, 646, the people offered to prove that McGowan had not declared his intention to become a citizen prior to the date of his naturalization, and other facts tending to show that he was not then qualified to be a citizen. This evidence was excluded by the lower court, and on this point the court above said:

"In the exclusion of this testimony, the court ruled correctly. The record of naturalization of an alien, like any other record of a court, imports verity. It can not be impeached for fraud unless that defense has been specially pleaded, setting forth in what the fraud consists. No replication had been filed alleging fraud, nor that the court had not jurisdiction of the person of defendant. The replication as to jurisdiction is, that the court did not have jurisdiction of the subject matter, but does not put in issue the jurisdiction of the court as to the person of defendant; hence, the evidence was properly rejected. But had the issue been made by the pleadings, we are still of opinion the evidence was inadmissible. It

seems clear, both on principle and authority, a record of naturalization, made by a court of competent jurisdiction, can not be impeached, in a collateral proceeding, by showing that the preliminary steps required by law have not, in fact, been taken. It is upon the principle such a record, like any other judgment of a court, affords complete evidence of its own validity. In proceedings of naturalization, matters are submitted to the decision of the court, and the presumption will be indulged the court heard evidence, was satisfied the applicant had complied with the law, and its findings must be held conclusive as to all facts recited in the record. *Spratt* v. *Spratt*, 4 Peters, 393; *The People* v. *Pease*, 30 Barb. 588; *Campbell* v. *Gordon and Wife*, 6 Cranch, 176; *McCarthy* v. *Marsh*, 1 Selden, 263."

In *State* v. *Hoeflinger*, 35 Wis. 393, 400, the court held that the record of naturalization was conclusive upon the question in a collateral proceeding. "It was the record of a judgment, and imports absolute verity."

This doctrine has been carried to such an extent that United States courts have refused to cancel a certificate of naturalization because it had been obtained by fraud.

In *United States v. Gleason*, 78 Fed. Rep. 396, in the Circuit Court for the Eastern District of New York, an attempt was made to set aside a certificate of naturalization on the ground that it had been obtained upon false representations made to the court, but the bill was dismissed on the ground that the naturalization in the Superior Court of the City of New York must be held conclusive.

The court in its opinion says, referring to the allegation that false statements had been made in procuring the decree of naturalization—

"But, whatever the fact was, the administration of the oaths and issuing of the certificate showed the satisfaction of the court as to the requirements, constituting a

judgment of admission to citizenship, with the force of such a judgment upon the status of the applicant."

"In *Campbell* v. *Gordon*, 6 Cranch, 176, Washington, J. said:

"'But if the oath be administered, and nothing appears to the contrary, it must be presumed that the court, before whom the oath, was taken, was satisfied as to the character of the applicant. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court for his admission to those rights.'"

The court quotes the paragraph from *Spratt* v. *Spratt*, 4 Pet. 393, *supra*, p. 11, and continues:

"And in *ex parte* Cregg, 2 Curt. 98, Fed. Cas. No. 3380, Mr. Justice Curtis, upon a question as to the court, said:

"'The importance and value of this privilege of citizenship, which is conclusively and finally bestowed by the act of the court having jurisdiction, "should prevent allowing any requirement of an act of Congress from having its full weight" in an application for this great right, so as to make an absolute and unimpeachable grant of it.'

"The conclusive effect everywhere of such judgments affecting the status of persons is alluded to in *Hilton* v. *Guyot*, 159 U. S. 113, at page 167." (78 Fed. Rep. 398.)

An appeal was taken by the United States to the Circuit Court of Appeals, 2d Circuit, where the decision of the lower court was affirmed. (90 Fed. 778.)

See also *State* v. *MacDonald*, 24 Minn. 48; *In re Christern*, 43 N. Y. Super. Ct. (11 Jones & Spencer) 523; *In re Coleman*, 15 Blatchford, 406, 6 Fed. Cases, No. 2980.

Proceedings Collaterally Questioned.

The Court of Claims undertook to pass upon the validity of the proceedings in the district court, in a collateral proceeding, and upon evidence *aliunde* (Findings

V and VI, p. 6, and opinion, p. 7). The validity of a judicial record can not be questioned by a court not sitting in review, except upon the ground that the court lacked jurisdiction. In *Voorhees* v. *Bank of the United States*, 10 Pet. 449, 474, 475, the court said:

"A judgment or execution irreversible by a superior court, can not be declared a nullity by any authority of law, if it has been rendered by a court of competent jurisdiction of the parties the subject matter, with authority to use the process it has issued: it must remain the only test of the respective rights of the parties to it."

And further:

"The errors of the court do not impair their validity: binding till reversed, any objection to their full effect, must go to the authority under which they have been conducted. If not warranted by the constitution or law of the land, our most solemn proceedings can confer no right which is denied to any judicial act under colour of law, which can properly be deemed to have been done *coram non judice*; that is, by persons assuming the judicial function in the given case without lawful authority.

"The line which separates error in judgment from the usurpation of power is very definite; and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally, when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper: there can be no middle character assigned to judicial proceedings, which are irreversible for error."

In *Cooper* v. *Reynolds*, 10 Wall. 308, 315, 316, this court, in an opinion delivered by Mr. Justice Miller, says:

"The record of this case is introduced collaterally as evidence of title in another suit, between other parties, and before a court which has no jurisdiction to reverse or set aside that judgment, however erroneous it may be.

Nor can it disregard that judgment, or refuse to give it effect, on any other ground than a want of jurisdiction in the court which rendered it.

"It is of no avail, therefore, to show that there are errors in that record, unless they be such as prove that the court had no jurisdiction in the case, or that the judgment rendered was beyond its power. This principle has been often held by this court, and by all courts, and it takes rank as an axiom of the law."

In the case of *Robinson* v. *Fair*, 128 U. S. 53, was brought in question the right and power of a circuit court of the United States to examine into a decree of partition made by a probate court of the State of California, and on this point this court said (p. 86):

"The Circuit Court of the United States had no jurisdiction to set aside that decree, merely upon the ground of error, nor could it refuse to give it full effect, unless the Probate Court was without jurisdiction of the case. *Cooper* v. *Reynolds*, 10 Wall. 308, 315; *Gunn* v. *Plant*, 94 U. S. 664, 669; *Hall* v. *Law*, 102 U. S. 461, 464; *Marchand* v. *Frellsen*, 105 U. S. 423, 428. And in determining the question of jurisdiction, it must be remembered that Probate Courts of California have had for many years the rank of courts of general jurisdiction, and, as said in *Burroughs* v. *DeCouts*, 70 California, 361, 372, their proceedings, 'within the jurisdiction conferred upon them by the law, are to be construed in the same manner and with the like intendments as the proceedings of courts of general jurisdiction, and their judgments have like force and effect as judgments of the District Courts.' Probate Courts being, then, courts of superior jurisdiction, in respect to the settlement, distribution, and partition of estates coming within their cognizance, the recitals in the decree of partition unless contradicted by the record, will be presumed to be correct, and every intendment will be indulged in its support. *Settlemier* v. *Sullivan*, 97 U. S. 444, 449; *Cheely* v. *Clayton*, 110 U. S. 701, 708."

This general proposition is admitted, but the court has treated as jurisdictional, questions which are not in any

sense jurisdictional but which go to the merits of the application to the district court. In other words, the court has treated the character of the evidence presented in support of the application to the district court as a jurisdictional question.

This court has said in the case of *United States* v. *Arredondo* (6 Pet. 691, 709):

"The power to hear and determine a case is jurisdiction; it is '*coram judice*,' whenever a case is presented which brings this power into action; if the petitioner states such a case in his petition that on a demurrer the court would render judgment in his favor, it is an undoubted case of jurisdiction."

And this case is followed and similar language used in the case of *Rhode Island* v. *Massachusetts* (12 Pet. 657, 718), while in *Ex-parte Watkins* (7 Pet. 568, 572) this court in an opinion by Mr. Justice Story has said:

"But the jurisdiction of the court can never depend upon its decision upon the merits of a case brought before it; but upon its right to hear and decide it at all."

Upon an allegation that the claimant, Charles Gagnon, had been naturalized in the district court in and for the County of Richardson, Territory of Nebraska, and that the judgment of naturalization had not been recorded, or if recorded, that the record had been lost or destroyed, what court would have jurisdiction to hear and determine the question of supplying the record? Surely, no court other than the court where the proceedings originally took place or the successor to its jurisdiction, which in this case is the district court of the first judicial district of Nebraska (Finding IV, p. 3).

This being so, if the record was improperly supplied it was not a matter of usurpation of jurisdiction but error. The Court of Claims has no jurisdiction to correct error

of a State court, and least of all to correct it upon evidence *aliunde*.

Record Imports Verity.

The record of the naturalization of the claimant in the district court for the first judicial district of the Territory of Nebraska in and for the County of Richardson, on the 25th day of September, 1863 (page 4 of record), certified by the clerk of the district court of the first judicial district of the State of Nebraska, successor to the territorial court, imports verity. That court is sole custodian of its own records. The record, no matter when made, or no matter after what distance of years it was supplied, imports absolute verity and is binding upon all other courts within the United States.

The absolutely binding character of a judicial record and the extent to which it imports absolute verity are principles elementary in the law.

That there should be no question as to the verity which should attach to judicial records of the several States, the framers of our Government provided in the Constitution that —

"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." (Article IV, section 1.)

And pursuant to the authority conferred on Congress by the last sentence Congress on May 26, 1790, and March 27, 1804, enacted the provisions of law which will be found in Section 905 of the Revised Statutes, quoted *supra*, p. 8.

That said records and judicial proceedings, authenticated as therein provided, "shall have such faith and credit

given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The Court of Claims does not deny this general principle; but it insists in response thereto that the record upon which reliance is placed was not actually made up until the year 1897, thirty-three years after the date of the proceedings shown by the record.

The testimony upon which the District Court for the first judicial district of the State in March, 1897, based its order restoring the record was not before the Court of Claims and is not before this court. Yet that court undertook to say that simply because of the fact that there was no record or memorandum, or other paper of any kind among the records of that court, when it restored this record, deprived the restored record of all faith or credit; and that the fact that the judge and clerk were both dead at the time the application for restoration of the record was made, and the fact that the records for 1863 were assumed to be complete (whereas the findings show them incomplete) show that the action of the District Court in restoring the record was improperly taken. All this is irrelevant matter.

The claimant in the utmost good faith gave notice (foot of p. 5) to the Attorney-General of the time of his proposed application to the District Court for a restoration of the record, stating his intention to use the restored record, should it be restored, as evidence. After considering, as the order recites, "competent evidence," the court found that the application was made at September term, 1863; the proceedings regularly taken at that time, and the order made for the admission of the claimant to citizenship. It therefore ordered that application and the order of the court admitting the claimant to citizenship to be duly recorded.

Authorities on Power to Supply Record.

Whether it be a question of the power of the court to supply a record of proceedings unrecorded by the clerk, or to supply a lost record, the authorities are equally clear.

The leading case in this court on the subject of supplying the record of a fact not properly recorded is that of *In re Wight*, 134 U. S. 136. In that case, which was a criminal case, a party had been sentenced by a District Court of the United States upon an indictment which, so far as the record showed, was pending in the Circuit Court. Upon application made by him for a writ of *habeas corpus*, the Circuit Court, at a subsequent term, ordered that an order made previously to the trial remanding the indictment into the District Court for trial, but which had failed to be recorded by the clerk, be entered of record.

This court said (p. 143):

"Our first impression was that whatever might be the powers of the courts in this regard over their records during the term in which the transactions are supposed to have occurred, the record of which, or failure to make any record of which, is the subject of amendment, yet when it was attempted to do this after an adjournment and at a subsequent term of the court, the powers of the court in making such changes in the records of the proceedings were limited to those in which there remained written memoranda of some kind in the case, and among the files of the court, by which the record could be amended, if erroneous, or the proper entry could be supplied, if one had been omitted. And especially that in criminal procedure this power to make such entries, at a subsequent term of the court, of what had transpired at a former term, as would establish the authority of the court to pass a sentence of fine or imprisonment, either did not exist at all, or, if it did, was limited to cases in

which some written evidence of what was done remained in the papers connected with the case.

"We are satisfied, however, upon an examination of the authorities, that this restriction upon the power of the court does not exist."

In the case of *Gonzales* v. *Cunningham*, 164 U. S. 612, 623, in an opinion by the Chief Justice, this court sustained the action of the court below which directed entry of a *nunc pro tunc* record of the arraignment and pleas of defendant, holding that such entries were good, citing *In re Wight*, 134 U. S. 156, and *United States* v. *Vigil*, 10 Wall. 423. In the last case mentioned the act of Congress governing the case gave the right of appeal to either party if asked for within one year from the rendition of the judgment. A judgment against the United States was rendered at the January term, 1867, from which an appeal was sought to be taken. It was maintained on the part of the Government that the appeal had been prayed for by the district attorney in court at the time when the judgment was rendered and was granted, but the clerk, for some unexplained reason, neglected to make an entry of what was done. This was not discovered until the January term, 1869, after the district attorney had retired from office and he said that he had not only prayed for the appeal but charged the clerk to make the entry, and, as he believed, gave him a memorandum to that effect. The new district attorney made an application to the court to supply the record *nunc pro tunc*, which was granted, and the case came up to this court on the appeal. A motion was made to dismiss the appeal and denied by this court.

"The power to correct mistakes in its record, occasioned by oversight, which are of such nature that the record does not show what was in fact done or decided, is a power which is inherent in all courts of superior jurisdiction,

and is frequently exercised in furtherance of justice." (Decision of Circuit Court of Appeals in *Lincoln Nat'l Bank* v. *Perry*, 66 Fed. Rep. 887, 888.)

In *Blythe* v. *Hinckley* the court held that it was not the duty of counsel to see that proceedings in court are properly of record in the minutes. "This duty belongs to the officers of the court, and their default can not be used to the prejudice of parties relying upon the integrity of official records." (84 Fed. 228, 244.)

"Courts possess the inherent authority to enter judgments *nunc pro tunc*, and time will not bar its exercise." (*Fuller* v. *Stebbins*, 49 Iowa, 377.)

In *Kaufman* v. *Shain*, 111 Cal. 16, 19, the court said:

"Every court of record has the inherent right and power to cause its acts and proceedings to be correctly set forth in its records. The clerk is but an instrument and assistant of the court, whose duty it is to make a correct memorial of its orders and directions; and, whenever it is properly brought to the knowledge of the court that the record made by the clerk does not correctly show the order or direction which was in fact made by the court at the time it was given, the authority of the court to cause its records to be corrected in accordance with the facts is undoubted. (*Matter of Wight*, 134 U. S. 136; *Balch* v. *Shaw*, 7 Cush. 282; *Fay* v. *Wenzell*, 8 Cush. 315; *Frink* v. *Frink*, 43 N. H. 508; 80 Am. Dec. 189; *Crim* v. *Kessing*, 89 Cal. 486; 23 Am. St. Rep. 491.)"

In *Balch* v. *Shaw*, 7 Cush. 282, 284, was brought in question the validity of a *nunc pro tunc* entry made in 1838, of an order passed in 1824. The court says:

"The case turns, therefore, upon the question whether the record was rightfully amended, so that the tenant can maintain his title on that record.

"There can be no doubt that it is competent for a court of record, under its general, inherent, and necessary

authority, to correct the mistakes and supply the defect of its clerk or recording officer, so as to have the record conform to the actual facts and truth of the case, and that this may be done at any time as well after as during the term, *nunc pro tunc*."

In *Frink* v. *Frink*, 43 N. H. 508, 514, in passing upon the legality of a *nunc pro tunc* entry, the court says:

"Every court exercising a continuing jurisdiction—having an office for the preservation of its records, and the charge of those records by a proper officer—has, by law, an implied authority to amend its records, to make them conform to the facts and truth of the case; *Remick* v. *Butterfield*, 31 N. H. 85; *Dudley* v. *Butler*, 10 N. H. 284; 24 N. H. 344; *Claggett* v. *Simes*, 21 N. H. 43; or, as the same doctrine is well expressed by Fletcher, J., in *Balch v. Shaw*, 7 Cush. 284, there can be no doubt that it is competent for a court of record, under its general inherent and necessary authority, to correct the mistakes and supply the defects of its clerk or recording officer, so as to have the record conform to the actual facts and truth of the case."

In *Borrego* v. *Territory*, 8 New Mex. 446, 491; 46 Pac. Rep. 349, 362, it was expressly held that courts have power to cause *nunc pro tunc* entries to be made at any time after the term. The court says:

"There is diversity of opinion as to the source of the power to make *nunc pro tunc* entries, but there is none as to the existence of the power to make the records now as of then conform to and speak the actual truth of past transactions, where, by the neglect or inadvertence of the clerk, an omission has occurred, or a false entry has been made. Mr. Elliott is of the opinion that the power did not arise from the statute of Henry VI., but is inherent. 1 Elliott, Gen. Prac. sec. 192. Other authorities, we think correctly, take the same ground. *Balch* v. *Shaw*, 7 Cush. 284; *Fuller* v. *Stebbins*, 49 Iowa, 376; *Orim* v. *Kessing*, 89 Cal. 478, 26 Pac. Rep. 1074; Works, Courts, p. 171."

In *State* v. *Major*, 38 La. Ann. 642, 643, it is stated:

"The defendant next complains of an order of the judge on motion of the district attorney, directing the clerk to amend the minutes of the court after the order of appeal had been granted.

"In the light of our jurisprudence, the mere statement of the complaint is its best answer.

"The minutes of his court are absolutely under the control of the judge, and corrections of the same, so as to make them conform with the facts as they occurred, is not only permissible but it is imperative when the attention of the court is called thereto. *State* v. *Mason*, 32 Ann. 1018; *State* v. *Teissier*, 32 Ann. 1227; *State* v. *Cox*, 33 Ann. 1056."

In *Hershy* v. *Baer*, 45 Ark. 240, 242, speaking of the right of the circuit court to make a *nunc pro tunc* amendment of a record, the court says:

"The power of a circuit court to amend its record so as to cause it to speak the truth is one inherent in the idea of justice itself."

In *State* v. *King*, 27 N. C. (5 Iredell) 203, 204, the court says in an opinion by Chief Justice Ruffin:

"This court has so frequently had occasion to declare, that the power resides in every court to amend the entry on its minutes, or the record of its orders and judgments, *nunc pro tunc*, and that no other court could incidentally question the verity of the record as amended, that we supposed the point would be no more made. We must take the record as it is, because duly certified to us, and we are not at liberty to enquire, how it came to be as it is."

In the case of *Parsons* v. *McBride*, 49 N. C. (4 Jones Law.) 99, it is shown that a motion was made at the Fall Term, 1856, to supply a record for the partition and appropriation of certain real estate made at August Term, 1820, which "had been lost from among the records of the

said court. A copy of this paper was produced and proved to the satisfaction of the court, whereupon, the court allowed the amendment." From the action of the court in allowing the amendment an appeal was taken, and the court in passing upon this question, says:

"So many decisions have been made by this Court affirming the power of every Court to amend its own records, so as to make them conformable to the truth, that we had hoped that the question was at rest. The more recent cases are the following: *Clayton* v. *Liverman*, 7 Ire. Rep. 92, made in 1846; *Bradhurst* v. *Pearson*, 10 Ire. Rep. 55, made in 1849. In this case it is said, 'It has been repeatedly decided that every Court has the power to amend its own records, so as to make them speak the truth, and that we have no right to interfere with the use of their discretionary power.'"

In *Perry* v. *Adams*, 83 N. C. 266, 267, the court says:

"It is not only the right but the duty of the court, as its records import absolute verity, to so correct and amend them as to make them speak the truth, and be a transcript of whatever occurred that properly belongs to its record."

And the court further says:

"But it is equally plain that the amendment, whether made or refused, is not the subject of appeal. The court, whose records are to be affected is alone the judge of the facts and of the propriety of the amendment." (83 N. C. 268.)

In *Taylor* v. *McElrath*, 35 Ala. 330, it appears that on December 13, 1858, William McElrath moved the Probate Court to supply certain lost papers alleged to belong to the former Orphans' Court of the county. The lost record consisted of proceedings had in the Orphans' Court at its May Term, 1838. The Probate Court rendered a decree, which after stating the facts, continued as follows:

"And now comes into court the said William McElrath, by his attorneys, and in his own *proper person*, and propounds to the court a petition, order, writ of *ad quod damnum*, and order authorizing the erection of said mill-dam,—alleging that the same are, in fact and substance, copies of the original papers in said original cause; and also offered proof to establish the same by the affidavits of John S. Wilson and Benjamin D. Cook."

It further shows that the application was resisted and counter-testimony taken. The court, being convinced, ordered the various copies of papers be substituted for those lost.

The errors assigned on appeal were:

"1st, that the probate court had no jurisdiction of the case; 2d, that there was no record evidence to amend by, or to authorize the substitution; and, 3d, that there was not sufficient certainty in the proof to authorize the substitution." (p. 332.)

The Supreme Court in its opinion says:

"It is indispensable to the successful administration of justice, that every court should have the power of supplying its lost records. The decisions of this court fully recognize the existence of inherent power in courts of record, to substitute copies of lost records, even after judgment rendered.—*Williams* v. *Powell*, 9 Porter, 493; *Wilkerson* v. *Branham*, 5 Ala. 608; *McLendon* v. *Jones*, 8 Ala. 298; *Doswell* v. *Stewart*, 11 Ala. 629. The probate court is a continuation of the old orphans' court, with some modifications, and must have the power of supplying the lost records of that court."

In *Souvais* v. *Leavitt*, 53 Mich. 577, 579, the Supreme Court of Michigan, in an opinion by Chief Justice Cooley, held:

"The right of the judge to order the errors in the records of his court to be corrected is undoubted."

In *Van Etten* v. *Test*, 49 Neb. 725, 726, 727 (a case in the same State in which the proceedings concerned in the present case took place), the act of entering a judgment *nunc pro tunc* was sustained, the court saying:

"The authority of courts, both of law and equity, to enter a judgment or decree *nunc pro tunc* in a proper case and in furtherance of justice is one that does not depend upon statute; it is an inherent power lodged in the courts; and this power rests upon the principle that the courts have the authority, and it is their duty, to make their records say what actually occurred,—to speak the truth. If a judgment in fact was rendered, if an order in fact was made, and such judgment or such order not recorded, then that court, at any time afterwards, in a proper proceeding and upon a proper showing, is invested with the power to render *nunc pro tunc* such judgment or make such order."

May Be At Any Time.

We have already seen that in the case of *In re Wight* (134 U. S. 136) this court in a criminal case sanctioned an order supplying the record at a subsequent term. If such an amendment can be made at one term later no limit can be drawn upon the exercise of the power.

In *United States* v. *Vigil*, 10 Wall. 423, a record supplied after two years was held good.

We have seen in *Balch* v. *Shaw*, 7 Cushing, 282, 284, the Supreme Court of Massachusetts sustained a correction of a record made fourteen years after the time the proceedings took place.

So, too, in New Hampshire, referring to the right to enter *nunc pro tunc* records, the court in *Frink* v. *Frink* says:

"This may be done at any time, as well after as during the term. The length of time, in this case (12 years), between the granting of the license and the making up

of the record, does not take away the right or jurisdiction of the court." (43 N. H. 508, 514.)

In *Whiting* v. *Equitable Life, etc.* 60 Fed. Rep. 197, 200, the Circuit Court of Appeals says:

"Even subsequent to the adjournment of the term the court could, upon application, correct the record so as to show the truth of what actually occurred, and repair any error or omission of its officers, upon proper application being made."

"Time will not bar its exercise." (*Fuller* v. *Stebbins*, 49 Iowa, 377.)

"In *People* v. *County Court*, 9 Col. App. 41, 47; 47 Pac. Rep. 471, the court said:

"We are brought to the main question of the power of the court to amend its records after the term. Of this there is no doubt. The courts everywhere concede authority to make their records conform to the facts. The only possible limitation on the power of the courts in this direction is found in the general expression that after the term they are limited to the correction of those errors which may be regarded as of a clerical character, and which, when corrected, will make the records conform to the facts."

In the case of the *Inhabitants of Limerick*, 18 Maine, 187, the court says that if "the recording officer has erred in making up a proper or full record, the Court may in its discretion cause the record at any time to be amended or corrected so as to have it declare the whole truth."

In *Odell* v. *Reynolds*, 70 Fed. Rep. 656, 659, the Circuit Court of Appeals, 6th Circuit, says:

"It must be admitted that, by the expiration of the term, the court had no longer any power or authority to alter the judgment actually rendered at the former term in any essential particular. But it is too much to say

that the court had not the power to correct it so as to make it conform to the fact; that is to say, to the actual proceedings in court and the judgment directed to be entered thereon. On the contrary, it is a power inherent in the authority of every court having general jurisdiction to correct errors in the making up of its records whereby they fail to express the truth in regard to its proceedings. And this power may be exercised by the court at any time when the error is brought to its attention, and no injury is likely to happen to the parties or other persons by its exercise. No doubt such power should be cautiously and discreetly used, but that it exists is well established by authority."

In *Rugg* v. *Parker* (7 Gray, 172, *post*, p. 31) a record was made *nunc pro tunc* after 20 years; in *Laurence* v. *Richmond* (1 J. & W. 241), after 23 years; in *Taylor* v. *McElrath* (35 Ala. 330, *supra*, p. 25), after 20 years; in *Parsons* v. *McBride* (49 N. C. (4 Jones Law) 99, *supra*, p. 24), after 36 years.

May Be Upon Any Evidence.

The view taken by the Court of Claims that simply because the judge and the clerk of the court were dead, the court had no jurisdiction to correct its own records upon the testimony of other witnesses can not for a moment be sustained. The record as restored (p. 4) shows the presence of the sheriff also, and it was not found that he was dead at the time the record was restored, much less that all the inferior officers of the court and all attorneys and bystanders were dead. The court had as much right to resort to the recollection of these witnesses as to its own recollection.

From the statement of the case of *United States* v. *Vigil* 10 Wall. 432, heretofore referred to (*supra*, p. 21), it is evident that the record which was restored was upon parol evidence; that no record existed in the court.

The district attorney said that the appeal was prayed in open court at the time of the judgment and that he charged the clerk to make a memorandum of it and as he believed, gave him a memorandum to that effect. But it is not shown that the memorandum existed in the court, and the necessary inference is that it did not exist, yet this court held the record so restored was good.

In *Parsons* v. *McBride*, 49 N. C. (4 Jones Law, 99), copies of papers from outside the court records were "proved to the satisfaction of the court" and admitted by amendment, and this after more than 36 years.

In *Taylor* v. *McElrath*, 35 Ala. 330, copies were produced from outside of the court and proved by parol and substituted by order of court after 20 years.

In *Cleghorn* v. *Johnson*, 69 Ga. 369, 372, the court says:

"The authority of courts to establish lost office papers and amend their records, on motion, by any competent evidence, intrinsic and extrinsic, has too often been recognized by this court to be now questioned."

In *Balch* v. *Shaw*, 7 Cush. 282, 284:

"The court of common pleas, having the exclusive right and jurisdiction in the matter, were the proper judges of the necessity and propriety of extending the record, and of the proofs and of the sufficiency of the proofs upon which to proceed. Such a record, when made up, is conclusive, until altered or set aside by the same or some other court having jurisdiction, but it can not be drawn in question collaterally when such record is used or relied upon in support of a title."

And in *Frink* v. *Frink*, 43 N. H. 508, 515, the court says:

"We think it clear, upon the authorities, that the court may make such amendments upon any competent legal evidence, and that they are the proper judges as to the

amount and kind of evidence requisite in each case to satisfy them what was the real order of the court, or the actual proceedings before it; what was the proper entry to be made on the docket, and how the record should be extended."

In the case of *Rugg* v. *Parker*, 7 Gray, 172, a petition was presented to the court of common pleas at the September Term, 1855, to order the clerk to complete the record of a judgment rendered by that court at the December Term, 1835, the record of which judgment had remained incomplete because, in consequence of the utter insolvency of the defendant, the plaintiff had failed to furnish the clerk with the papers necessary for entering the judgment and complete the record thereof. The petitioner presented two promissory notes purporting to be the notes sued on, and called as a witness the attorney who made the writ, and took some other testimony upon the reason for the delay in furnishing the papers. The court ordered the record to be completed as prayed for, to which order exceptions were taken. In passing upon this the Supreme Court of Massachusetts says:

"The court of common pleas undoubtedly had authority to complete their records, in the action on the notes. *Balch v. Shaw*, 7 Cush. 282. * * * Whether the court would order the completion of those records was a matter of judicial discretion; and the action of the court, within the limits of its authority, is not a subject of exception. But if these exceptions were properly before us, we should overrule them; being of opinion that they do not show that the order was wrongly made."

In *Parker* v. *Rugg* this judgment so obtained and recently entered up was allowed to be set off in an action commenced many years after that judgment and before the completion of the record. (9 Gray, 209.)

The court in *Inhabitants of Limerick*, 18 Me. 187, says:

"Each court must necessarily be the judge of what it has decided and adjudged and when it orders an amendment of the record the presumption of other courts must necessarily be, that it does not undertake to order its clerk to record what it never had decided."

In *Sprague* v. *Litherberry*, 4 McL. 442, 449; 22 Fed. Cases, No. 13,251, there was brought in question the validity of a *nunc pro tunc* entry made upon affidavit four years afterward, showing appointment of guardian. Court held record good, saying:

"Has a court the power to enquire into the jurisdiction of the court whose record is offered in evidence? This power is necessarily exercised by all courts. But in making such an inquiry, the court must be careful to discriminate between what constitutes jurisdiction and error. Where a court, from its general powers, has jurisdiction of the subject-matter, a due notice served on the party, if the proceedings be *in personam*, or an attachment laid on the land, if the proceedings be *in rem*, gives jurisdiction; and after this attached, no proceeding in subsequent stages of the case, however erroneous, will make them void. *Bank United States* v. *Voorhees*, 10 Peters; 1 McLean, 224."

Conclusion.

Nearly all the authorities cited in the opinion of the Court of Claims are in cases where the application was for an amendment of a pleading, or judgment, or some other action already taken in court; in other words, they were not attempts to supply a record of that which had already been done or had been recorded imperfectly or not at all, but to do something different from what had already been done.

In Indiana a somewhat stricter rule seems to prevail than in other States, as shown in the cases cited (Record, p. 10). In the last-named of these cases, *Schoonover* v. *Reed*, 65 Ind. 313, 316, the court admits that its rulings are in conflict with those in other States, saying:

"In some courts in other States such entries are allowed simply upon parol evidence. But, as it seems to be the settled law of this State that a *nunc pro tunc* entry of an order or judgment of a court can not be made upon such evidence alone, we think it the better course to adhere to the law as thus settled."

It would also now probably admit that its ruling is in conflict with that of this court *In re Wight*, 134 U. S. 136, and other cases above cited.

It is true that it is suggested in the opinion (p. 13) that there has usually been shown to be a cause pending on which to found an order restoring the record. But none of the cases make any distinction of this sort, or limit the power to those in which there is a pending cause. As pointed out by this court in *United States* v. *Hill*, 120 U. S. 169, a proceeding for naturalization is not a "cause" in the strict sense of the term. It is (p. 177) one of those "special and peculiar cases of which the courts have jurisdiction, where only the party asking for the right or privilege is before the court."

And, again (p. 178):

"The papers are usually prepared by the parties themselves or their friends, or more frequently by agents of candidates. The hearings are *ex parte*, at no stated times, and it is rare that any person appears in opposition."

And it is held that the preparation of papers in these cases is so entirely outside of the duties of the clerk that when he renders services in these cases beyond the mere entry of the matter on the journal, he acts not strictly as clerk, but rather as a person specially appointed to assist the court. Hence in a special proceeding like this, where there is no cause pending, where there are not, or at least need not be, any papers filed, and the entry on the journal constitutes the whole proceeding, a denial of a power to

restore a lost entry on the journal would be in effect to deny all power to restore such proceedings in any case.

This court in an opinion by Chief Justice Marshall in *Ex parte Watkins*, 3 Pet. 193, 207, says:

"The judgment of the circuit court in a criminal case is of itself evidence of its own legality, and requires for its support no inspection of the indictments on which it is founded. The law trusts that court with the whole subject, and has not confided to this court the power of revising its decisions. We can not usurp that power by the instrumentality of the writ of *habeas corpus*. The judgment informs us that the commitment is legal, and with that information it is our duty to be satisfied."

This is directly applicable in the case at bar. The judgment of the District Court informed the Court of Claims that the naturalization in fact took place and required no inspection of the application for naturalization upon which it was founded. The law trusts the District Court with the whole subject; with jurisdiction over naturalization matters and over its own records, and has not confided to the Court of Claims the power to revise its decisions.

Even if this court could look at this controversy as an original matter, which could be inquired into on its merits, it is hard to see why the decision of the Court of Claims should be accepted. As Charles Gagnon made the allegation that he had been naturalized before the District Court of the first judicial district of Nebraska on the 25th day of September, 1863, and that no record thereof could be found, he was entitled to have a judicial determination of the truth of his allegation. There can be no good reason assigned why he should have applied to any court other than the court which succeeded to the jurisdiction of the said district court to inquire into this matter. Had he attempted to prove his allegation in the Court of

Claims, he would have been turned away, and rightly, with the statement that he must apply to the court in which the proceeding took place or to its successor. The decision of that court, which was in a position to inspect the records of the District Court and ascertain their condition and which was able to have witnesses appear before it for the purpose of giving their testimony in the presence of the court, is entitled to more weight than the decision of the Court of Claims attacking the action of the local court upon a statement of a special attorney of the Department of Justice, which the parties consented to have read as evidence at the trial of the case.

The record of the admission of the appellant, Charles Gagnon, to be a citizen of the United States in 1863, should, therefore, have been accepted by the Court of Claims as conclusive. It shows that he was a citizen in 1866, when the depredation was committed.

The judgment should, therefore, be reversed, and the cause remanded with directions to the Court of Claims to enter judgment in favor of the claimant.

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